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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

HENRY JOSEPH LOIBLE,

Defendant and Appellant.

E073584

(Super.Ct.No. SCR35175)

OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Reversed.

Rex A. Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Thomas S. Patterson, Assistant Attorney General, Tamar Pachter, and Nelson R. Richards, Deputy Attorneys General, as Amicus Curiae on behalf of Defendant and Appellant.

Jason Anderson, District Attorney, and James R. Secord, Deputy District Attorney, for Plaintiff and Respondent.

Defendant and appellant Henry Joseph Loible challenges the trial court’s summary denial of his petition for resentencing pursuant to Penal Code¹ section 1170.95, a statute recently enacted by Senate Bill No. 1437 (Senate Bill 1437). Loible contends, and amicus curiae Attorney General of California agrees, that the trial court erred in finding Senate Bill 1437 and section 1170.95 unconstitutional. The People, the plaintiff and respondent represented here by the San Bernardino County District Attorney, contend the trial court was correct.²

After the trial court’s ruling, our colleagues in Division one of the Court of Appeal, Fourth Appellate District upheld the constitutionality of Senate Bill 1437 and section 1170.95 in two companion cases: *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270 (*Gooden*) and *People v. Lamoureux* (2019) 42 Cal.App.5th 241 (*Lamoureux*). We find the analysis in *Gooden* and *Lamoureux* persuasive and reverse the trial court’s order.

I. BACKGROUND

In 1978, Loible was convicted of murder and sentenced to an indeterminate prison term. In 2019, he petitioned for resentencing under section 1170.95. The trial court summarily denied the petition, finding Senate Bill 1437 and section 1170.95 unconstitutional for amending two voter enacted initiatives, Propositions 7 and 115.

¹ Further undesignated statutory references are to the Penal Code.

² The People’s January 7, 2020 request for judicial notice of various documents relating to Propositions 7 and 115, Senate Bill 1437, and Loible’s underlying criminal case was unopposed, and is granted on that basis. (Cal. Rules of Court, rule 8.54(c).)

II. DISCUSSION

Senate Bill 1437 “amend[ed] the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f).) Section 1170.95 “provides a procedure by which those convicted of murder can seek retroactive relief if the changes in the law would affect their previously sustained convictions.” (*People v. Larios* (2019) 42 Cal.App.5th 956, 964.)

In *Gooden, supra*, 42 Cal.App.5th 270, the court concluded that Senate Bill 1437 did not unconstitutionally amend Proposition 7.³ “[T]he voters who enacted Proposition 7 considered and approved increased punishments for persons convicted of murder, including additional means by which such persons could be punished by death or LWOP. However, the text of the initiative and the ballot materials for the initiative do not demonstrate an intent to freeze the substantive elements of murder in place as they existed in 1978. Therefore, Senate Bill 1437—which did not address the issue of

³ “Proposition 7, commonly known as the Briggs Initiative, increased the punishment for first degree murder from a term of life imprisonment with parole eligibility after seven years to a term of 25 years to life. (Prop. 7, §§ 1–2.) It increased the punishment for second degree murder from a term of five, six, or seven years to a term of 15 years to life. (*Ibid.*) Further, it amended section 190.2 to expand the special circumstances under which a person convicted of first degree murder may be punished by death or life imprisonment without the possibility of parole (LWOP). (*Id.*, §§ 5–6.) Proposition 7 did not authorize the Legislature to amend or repeal its provisions without voter approval.” (*Gooden, supra*, 42 Cal.App.5th at p. 278.)

punishments for persons convicted of murder—cannot be considered an amendment to Proposition 7.” (*Gooden*, at p. 286.)

The court in *Gooden, supra*, 42 Cal.App.5th 270 also concluded that Senate Bill 1437 did not improperly amend Proposition 115.⁴ “Senate Bill 1437 did not augment or restrict the list of predicate felonies on which felony murder may be based, which is the pertinent subject matter of Proposition 115. It did not address any other conduct which might give rise to a conviction for murder. Instead, it amended the mental state necessary for a person to be liable for murder, a distinct topic not addressed by Proposition 115’s text or ballot materials.” (*Gooden*, at p. 287.) The court found limiting language in Proposition 115, requiring a supermajority of the Legislature for amendment of certain statutory provisions, did not apply to bar Senate Bill 1497’s enactment by a simple majority. (*Gooden*, at pp. 287-288.)

In reaching each of these conclusions, the court in *Gooden* explained, “we reiterate a bedrock principle underpinning the rule limiting legislative amendments to voter initiatives: ‘[T]he voters should get what they enacted, not more and not less.’ [Citation.] Here, the voters who approved Proposition 7 and Proposition 115 got, and still have, precisely what they enacted—stronger sentences for persons convicted of murder and first degree felony-murder liability for deaths occurring during the commission or

⁴ “Proposition 115, known as the ‘Crime Victims Justice Reform Act,’ amended section 189, among other statutory and constitutional provisions. It amended section 189 to add kidnapping, train wrecking, and certain sex offenses to the list of predicate offenses giving rise to first degree felony-murder liability. (Prop. 115, § 9.) Proposition 115 authorized the Legislature to amend its provisions, but only by a two-thirds vote of each house. (*Id.*, § 30.)” (*Gooden, supra*, 42 Cal.App.5th at p. 278.)

attempted commission of specified felony offenses. By enacting Senate Bill 1437, the Legislature has neither undermined these initiatives nor impinged upon the will of the voters who passed them.” (*Gooden, supra*, 42 Cal.App.5th at pp. 288-289.)

The People also raise several alternative arguments, specifically, that Senate Bill 1437 violates the separation of powers doctrine, and that section 1170.95 violates the Victims’ Bill of Rights (Cal. Const., art. I, § 28). Since the trial court did not adopt these arguments, we typically would not address them. (See *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230.) In the interest of efficiency, however, we note that each of these alternative arguments were rejected by the court in *Lamoureux, supra*, 42 Cal.App.5th 241 and we agree with its reasoning for doing so.

Regarding separation of powers, the *Lamoureux* court commented: “[I]t is clear to us that section 1170.95’s interference with the executive’s clemency authority, if any, is merely incidental to the main legislative purpose of Senate Bill 1437. Therefore, we conclude section 1170.95 does not impermissibly encroach upon the core functions of the executive.” (*Lamoureux, supra*, 42 Cal.App.5th at p. 256.) The court further concluded that Senate Bill 1437 does not intrude upon the core function of the judiciary by requiring trial courts to retroactively reopen final judgments and that the Legislature acted in conformity with its institutional authority when it approved section 1170.95. (*Lamoureux*, at p. 264.)

Lamoureux also rejected the contention that section 1170.95 violated the victims’ bill of rights. The court first explained that section 1170.95 did not violate victims’ right to a speedy trial and a prompt and final resolution of the case: “It would be anomalous and untenable for us to conclude, as the People impliedly suggest, that the voters intended to categorically foreclose the creation of any new postjudgment proceedings not in existence at the time [the victims’ bill of rights] was approved simply because the voters granted crime victims a right to a ‘prompt and final conclusion’ of criminal cases. (Cal. Const., art. I, § 28, subd. (b)(9).)” (*Lamoureux, supra*, 42 Cal.App.5th at p. 265.)

Lamoureux also held that section 1170.95 does not violate the rights of victims, their families, or the public to have their safety considered in any parole or postjudgment release decision. “During resentencing, the court may weigh the same sentencing factors it considers when it initially sentences a defendant, including whether the defendant presents ‘a serious danger to society’ and ‘[a]ny other factors [that] reasonably relate to the defendant or the circumstances under which the crime was committed.’ (Cal. Rules of Court, rule 4.421(b)(1), (c).) At minimum, the trial court’s ability to consider these factors during resentencing ensures the safety of the victim, the victim’s family, and the general public are ‘considered,’ as required by [the victims’ bill of rights]. (Cal. Const., art. I, § 28, subd. (b)(16).)” (*Lamoureux, supra*, 42 Cal.App.5th at p. 266.)

Finally, *Lamoureux* concluded that section 1170.95 does not conflict with the voters’ findings or declarations, or the uncoded initiative provisions, as “the findings and declarations in subdivision (a) [of the victims’ bill of rights] ‘represent only a general

statement of a problem identified by [the] Legislature, and the goal the Legislature hoped to achieve,’ not an independent source of enforceable rights” and that “‘statements of purpose and intent in [an] “uncodified section . . . properly may be utilized as an aid in construing” [an initiative], but they “do not confer power, determine rights, or enlarge the scope of [the] measure.”’” (*Lamoureux, supra*, 42 Cal.App.5th at p. 266.)

We agree with the analyses in *Gooden* and *Lamoureux*. (See also *People v. Johns* (2020) 50 Cal.App.5th 46, 64-70.) On that basis, we conclude that the trial court erred in finding Senate Bill 1497 and section 1170.95 unconstitutional. We reverse the trial court’s order and remand for it to consider Loible’s petition on its merits. We offer no opinion as to whether the trial court should issue an order to show cause or grant the relief requested.

III. DISPOSITION

The postjudgment order is reversed. The matter is remanded for further proceedings in accordance with section 1170.95.

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RAPHAEL
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.